

OPINION
49-25

March 30, 1949 (OPINION)

CLERK OF COURT

RE: Mechanic's Lien

Your letter of March 19, 1949, addressed to the Honorable Wallace E. Warner, attorney general, has been turned over to me for attention.

In said letter you ask for a construction of section 35-1222 of the 1943 Revised Code, pertaining to the discharge of mechanics' liens.

Said section provides that upon written demand to the holder, suit must be commenced within thirty days or the lien shall be forfeited. This section also provides, in a separate sentence, that no lien shall be valid or effective unless the holder thereof shall assert the same either by complaint or answer within six years after the account is due, and it also provides that if the summons or complaint is not filed within the limitation therein provided, the clerk of court may cancel the lien upon request.

It is our opinion that after the notice has been served on the lienholder, and he has filed to institute proceedings within the time specified by the statute, that the person against whom the lien is filed may submit for filing proof of having served the notice and proof that no action has been taken, and upon the presentation of these proofs it is the duty of the clerk to file the same, but we do not hold that the clerk has power to take any further steps for the purging of the record of the lien than above described until the lien has been filed for six years without the taking of any action.

WALLACE E. WARNER

Attorney General